

## **Annex 6: Memorandum of Understanding between the Scottish Commission for Human Rights (SHRC) and the Equality and Human Rights Commission (EHRC)**

### ***EHRC Version Control note***

*Signed in May 2009 by the Chairs of both Commissions.*

*Signed in May 2014 by the Chairs of both Commissions. Reviewed with no changes arising.*

*Signed in December 2016 by the Chairs of both Commissions. Reviewed on 25<sup>th</sup> November 2016 and made changes to point 23 by having an annual review and title for EHRC Director Scotland also included.*

### **The Purpose of the Memorandum**

1. The purpose of this Memorandum of Understanding is to set out a framework agreement for co-operation and communication between the SHRC and the EHRC. It is intended to clarify the respective roles and responsibilities of the Commissions, particularly in relation to the operation of the EHRC in Scotland.
2. This Memorandum has been prepared with a view to enhancing the effectiveness of the two Commissions and in particular to facilitate the understanding of the general public about how the two Commissions function in relation to each other.

### **The Remits of the Commissions**

3. The SHRC was established by the Scottish Commission for Human Rights Act 2006 and operates as the Scottish Human Rights Commission. It has a remit to promote human rights and encourage best practice in relation to human rights in Scotland. It can fulfil this remit by providing information, guidance and education; by conducting enquiries; by monitoring law, policy and practice; and by intervening in civil court proceedings.
4. In relation to its general duty, the SHRC's statutory remit allows it to promote human rights and encourage best practice in devolved, reserved and international areas. However, in relation to the exercise of specific powers, the SHRC's remit allows it to conduct inquiries only into the policies and practices of Scottish public authorities; it can review and recommend changes only to the law of Scotland or the policies and practices of Scottish public authorities; it can intervene only in Scottish Courts; and it can enter only those places of detention in which an individual is detained by or with the authority or consent of a Scottish public authority.
5. The EHRC was established by the Equality Act 2006 and operates as the Equality and Human Rights Commission. The Equality Act sets out the remit of the EHRC, which is to promote equality and diversity and enforce the

equality laws, and to promote and protect human rights, by encouraging good practice and promoting mutual respect including good relations.

6. The EHRC's remit extends across Great Britain. In relation to human rights in Scotland, the EHRC's remit covers human rights issues arising in reserved areas. However, the EHRC has specific powers in Scotland in relation to equality laws, and in particular it has the power to conduct inquiries and investigations, to make applications to court, including judicial reviews and interventions, to provide legal assistance to individuals. In respect of human rights in relation to reserved matters, the Commission has the power to conduct inquiries, to take judicial reviews and to intervene in relevant cases before the courts.

### **The Working Relationship**

7. Each Commission is entitled to perform its statutory functions independently of the other and without outside influence. This Memorandum does not prejudice that independence.
8. The Commissions recognise that their respective roles can be enhanced by working effectively together. They are both committed to the development of a positive, constructive working relationship between the two organisations.
9. Where common areas of interest within their respective remits are identified, the Commissions will liaise to establish whether it is possible to arrive at common policy positions. In the event that the Commissions do take the same position, they pledge to co-operate insofar as possible to avoid unnecessary duplication of work.
10. Where the Commissions do not arrive at a common policy position, they will keep each other informed of their respective positions and, if appropriate, their reasoning. In particular they will make best efforts to notify each other prior to making public any such position or reasoning.
11. Where either Commission identifies an issue falling within the remit of both Commissions, each Commission will discuss any proposed action with the other, and the Commissions will endeavour to agree how best the work can be carried out in order to maximise resources and avoid unnecessary duplication of work.

### **Consent of the SHRC in relation to devolved matters**

12. Under the Equality Act, the EHRC is entitled to undertake human rights action in relation to devolved matters / matters within the legislative competence of the Scottish Parliament, if it obtains the consent (general or specific) of the SHRC. The EHRC will undertake human rights activity in relation to such matters only with the consent of the SHRC. Such consent will be sought whether the activity is undertaken directly by the EHRC or indirectly by third parties engaged or funded by the EHRC to carry out human rights activity in relation to such matters.

13. The SHRC's decision whether or not to consent will be informed by whether the proposed work is complementary to the SHRC's remit, policy positions and programmes, and by whether or not the SHRC is engaged or intends to engage in similar work.

### **Communication**

14. Each Commission undertakes to provide regular updates to the other on its work.
15. Each Commission undertakes to share with the other, as soon as possible, information which it considers may be of interest to the other, subject to any confidentiality requirements.
16. The Commissions undertake to establish and maintain effective communication channels to assist each Commission in fulfilling its responsibilities as fully and efficiently as possible.
17. The Chief Executive of the EHRC, the EHRC Executive Director for Scotland, the EHRC Head of Scotland and the Chair of the SHRC, and other staff of both Commissions, will maintain regular contact with each other.
18. The Chairs of the Commissions, will meet together formally from time to time, and at least annually, in order to discuss matters of mutual concern.
19. The Commissioners of the SHRC and the Chair and Members of the Scotland Committee of the EHRC will meet together formally from time to time, to discuss matters of mutual interest.
20. International matters are governed by the interim protocol between the EHRC, the SHRC and the Northern Ireland Human Rights Commission.

### **Monitoring and Review**

21. In the event of either Commission identifying a problem in the operation of this Memorandum, they will seek to resolve it quickly and informally. If this is not possible, the Chief Executive of the EHRC and the Chair of the SHRC will take responsibility for achieving a mutually acceptable solution.
22. While it is intended that the arrangements in the Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this Memorandum prevents the making of arrangements to meet specific exceptional needs.
23. The Scotland Committee and the Head of Scotland of the EHRC and the Chair of the SHRC will keep this Memorandum of Understanding under review. An annual review on the operation of the Memorandum will be undertaken and a short report prepared on how and where the two Commissions have collaborated.



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Judith Robertson  
Chair, Scottish Human Rights Commission

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David Isaac, Chair, Equality and Human Rights Commission